

General Information Letter: Alternative apportionment under IITA Section 304(f) cannot be granted on the mere assertion of distortion without any underlying facts.

March 9, 2001

Dear:

This is in response to your letter dated February 19, 2001, in which you request permission to use apportion some of the business income of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx using a three-factor apportionment formula and the remainder of the business income using the transportation company formula, rather than the statutorily-mandated apportionment formula, pursuant to Section 304(f) of the Illinois Income Tax Act (the "IITA"; 35 ILCS 101 *et seq.*). The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us). For the reasons discussed below, your petition cannot be granted at this time.

In your letter you have stated the following:

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx operates a warehousing business as well as a transportation business. The nature of the operation requires a hybrid apportionment calculation utilizing both a traditional three-factor apportionment for the warehousing operation and a single-factor apportionment based on revenue miles for the transportation operation.

We request to compute the Illinois apportionment factor in accordance with Illinois Regulation 86 Ill. Adm. Code Sec. 100. This regulation discusses apportionment for a unitary business group in which a single-factor and traditional three-factor apportionment is necessary.

## **Response**

You have not provided sufficient details concerning the business of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx for us to provide you with specific guidance on the apportionment of its business income.

If the warehousing and transportation operations of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx are separate businesses, you are required to apportion the business income from each separately. See 86 Ill. Adm. Code Section 100.3010(b). If that is the case, and one of the businesses is the provision of transportation services, the business income of that business would be apportioned using the transportation services formula under Section 304(d) of the IITA. The warehousing business income would be apportioned using the sales factor under Section 304(a) and (h) of the IITA.

If, on the other hand, xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx is engaged in only one unitary business, it is necessary to determine whether its business is properly characterized as the provisions of transportation services or not. If it is, the statutes require the business income of the entire company to be apportioned using the transportation services formula. See *Texaco-Cities Pipeline Co. v. McGraw*, 286 Ill. App. 3d 529 (First Dist. 1997). Otherwise, the sales factor formula must be used.

Section 304(f) of the IITA provides:

If the allocation and apportionment provisions of subsections (a) through (e) and of subsection (h) do not fairly represent the extent of a person's business activity in this State, the person may petition for, or the Director may require, in respect of all or any part of the person's business activity, if reasonable:

- (1) Separate accounting;
- (2) The exclusion of any one or more factors;
- (3) The inclusion of one or more additional factors which will fairly represent the person's business activities in this State; or
- (4) The employment of any other method to effectuate an equitable allocation and apportionment of the person's business income.

Your request contains no information that would tend to show that the statutory apportionment formula fails to fairly represent the extent the extent of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx business activity in Illinois.

Taxpayers who wish to use an alternative method of apportionment under this provision are required to file a petition complying with the requirements of 86 Ill. Adm. Code Section 100.3390, which may be found on the Department's web site at [www.revenue.state.il.us](http://www.revenue.state.il.us).

Please note that 86 Ill. Adm. Code Section 100.3390(e)(1) requires a petition to be filed at least 120 days prior to the due date (including extensions) for the first return for which permission is sought to use the alternative apportionment method. A petition filed February 19, 2001 will allow a taxpayer to use the requested method on original returns due on or after June 20, 2001, if granted.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you still believe that your petition should be granted, please supplement the petition in accordance with the provisions of 86 Ill. Adm. Code Section 100.3390. If you have any questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton  
Deputy General Counsel -- Income Tax